manner that this cannot be revived, and the prosecutor, if he proceeds further, will be put to a new one." COOLEY ON TORTS (2nd ed.), p. 216; *Clark* v. *Cleveland,* 6 Hill 344; *Casebeer* v. *Rice,* 18 Neb. 203; *Apgar* v. *Woolston,* 43 N. J. L. 57.

MECHANIC'S LIEN—RIGHTS OF SUBCONTRACTOR.—Plaintiff, a subcontractor, having furnished machinery for generating electricity for a trolley system, seeks to enforce a mechanic's lien under a statute providing a lien when machinery is furnished for "manufacturing purposes." It was agreed in the principal contract that no lien for labor or materials should be filed. *Held,* 1—that the generating of electricity is a manufacturing process; 2—that a subcontractor with notice has no right to a lien where the principal contractor has agreed with the owner that none shall be filed. *Bates Machinery Co.* v. *Trenton & N. B. R. R. Co.* (1904), — N. J. —, 58 Atl. Rep. 935.

The defendant maintained, 1—that the machinery furnished by the plaintiff was not for manufacturing purposes, and 2—that evidence offered to prove that plaintiff before entering into the contract had notice of the principal contractor's agreement (that no liens for labor or material should be filed) should be admitted. Possibly from a purely technical point of view the generating of electricity is not a manufacturing process, it is, to be more exact, a making available a form of energy which already exists. Yet it is the common expression, the sense of legislatures and the universal thought that electricity is manufactured and it has been so held by most of the courts. *Beggs* v. *Edison Electric Illuminating Co.,* 96 Ala. 295; *Brush Electric Mfg. Co.* v. *Wemple,* 129 N. Y. 543. There are, however, decisions in two states where exemptions from taxation have been denied to electric light companies upon the ground that they were not included under the term "Corporations carrying on Manufacturing within the State." *Commonwealth* v. *Edison Electric Co.,* 170 Pa. St. 231; *Frederick Elec. Light Co.* v. *Frederick City,* 84 Md. 599. The claim by the defendant that the plaintiff was bound by the agreement of the principal contractor with the owner is the general rule followed by the majority of the courts. *Bowen* v. *Aubrey,* 22 Cal. 566; *Epeneter* v. *Montgomery County,* 98 Iowa, 159; *Seeman* v. *Biemann,* 108 Wis. 365. But such a holding would seem to defeat the very purpose of the law. The contention that the laborer or materialman is not obliged to accept the employment is not satisfactory. Such acceptance is quite often a matter of necessity. The law is for his protection and should not be defeated by agreements of the principal contractor with the owner. It has been so held in *Smalley* v. *Gearing,* 121 Mich. 190, and *Norton* v. *Clark,* 85 Me. 357.

PARTNERSHIP—SECRET AGREEMENTS BY MEMBER OF FIRM—PARTNERSHIP ASSETS.—Plaintiffs and a brother were engaged in the lumber business. The brother died, and plaintiffs filed a bill for an accounting. While this proceeding was pending, R. offered to buy certain land belonging to the partnership. Without consulting the widow of the deceased partner, plaintiffs gave R. an option on the land at $500,000. R. then sought to induce the widow to agree to the sale at that price, but she demanded $900,000. Finally R. and the widow made an arrangement by which she was to receive $44,444.45 in

addition to her partnership share if she would consent to the sale. Plaintiffs knew nothing of this arrangement, but perfected the sale and transfer for $500,000. They now claim an interest in this $44,444.45 as a partnership asset. *Held,* that the widow should account for the money so received. *Comstock* v. *McDonald* (1904), — Mich. —, 101 N. W. Rep. 55.

The court placed the decision on the ground that the relation of partnership is one requiring the utmost good faith, and that secret arrangements by which one member was to receive more for firm property than others was a breach of that faith. *Latta* v. *Kilbourn,* 150 U. S. 541, 14 Sup. Ct. 201, 37 L. Ed. 1169; *Todd* v. *Rafferty's Adm.,* 30 N. J. Eq. 254; *McMahon* v. *McClernan,* 10 W. Va. 419; *Lowry* v. *Cobb,* 9 La. Ann. 492. The strong dissenting opinion pointed out that plaintiffs were not defrauded nor damaged in any way by the widow's act. They received what they asked for the property and were satisfied. The additional sum was merely an inducement to encourage the widow to consent to a contract to which they had already assented. It is difficult to see how the application of this latter rule could work injury to anyone. The courts, however, go to great lengths in favoring the partnership relation. As illustrations of this tendency see *Hodge* v. *Twitchell,* 33 Minn. 389, and *Fenning* v. *Chadwick,* 3 Pick. 420. The rule by the overwhelming weight of authority is that the partnership relation forbids a member to "assume a position which would ordinarily excite a conflict between his individual interest and a faithful discharge of his fiduciary duties."

PLATS—DEDICATION—PURCHASER'S RIGHTS IN STREETS.—A corporation platted a large tract of land adjoining a town. The plat was not recorded. One avenue of the plat ran diagonally through the tract, cutting off one corner of plaintiff's lot, sold with reference thereto, making an 18 foot frontage along the avenue. Defendant, as successor of the original vendors, made and executed a new plat with all the streets intersecting at right angles. Lots were sold and residences erected on the land designated as the diagonal avenue. Under the new plat a triangular lot cut off plaintiff's 18 foot frontage. Plaintiff brings suit to compel the defendant to record the first plat as the true plat of the addition, and to open the diagonal avenue as laid down in that plat. *Held,* a mandatory injunction should be issued to compel the performance of both demands. *Edwards* v. *Moundsville Land Co.* (1904), — W. Va. —, 48 S. E. Rep. 754.

The defendant's contention that the avenue was never legally dedicated to the public, that the new plat was an advantage to the plaintiff, and that the plaintiff should be estopped by not objecting to the public sale of the lots under the new plat and the erection of buildings thereon was held unavailing under the settled doctrine of the court that the plat or plan is a unity, and that a purchaser acquires a right in all the public ways designated thereon, and may force the dedication. *Cook* v. *Totten,* 49 W. Va. 177, 87 Am. St. Rep. 792; ELLIOTT, ROADS AND STREETS, § 120; DILLON, MUNIC. CORP., § 640. The cases cited by these authors to sustain the proposition are numerous. In many of them the facts do not warrant the broad statement given. The doctrine has been denied in *Squire* v. *Campbell,* 1 Myl. & Cr. 468; *Parsons* v.